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The Commonwealth of Massachusetts  
COMMISSION ON JUDICIAL CONDUCT

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PRESS RELEASE

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FOR IMMEDIATE RELEASE  
January 4, 1993

IN RE JUDGE B. JOSEPH FITZSIMMONS, JR.

BOSTON, MA (January 4, 1993) --

The Commission on Judicial Conduct announces that it has entered into an agreement resolving the Amended Formal Charges filed against B. Joseph Fitzsimmons, Jr., Associate Justice of the Probate and Family Court Department. The Agreement resolves Complaints Nos. 89-105, 90-4, 91-45, 91-53, 91-71, and 92-49, which have been consolidated in the Amended Formal Charges filed with the Supreme Judicial Court as Case No. OE-0089.

The terms of the Agreement include a statement of voluntary admissions by Judge Fitzsimmons concerning his misconduct, which will be made available to the public.

By the terms of the Agreement Judge Fitzsimmons is required to refrain from sitting as a judge on any court for a period of six months commencing January 1, 1993, during which time he shall not receive pay. Thereafter he is required to pay a fine of \$60,000. It is the Commission's intention that the financial penalty imposed on Judge Fitzsimmons by the loss of his judicial salary and the fine will approximate \$100,000.

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The terms of the agreement require Judge Fitzsimmons to participate in counselling and training programs intended to address various aspects of the charged misconduct, including the counselling that he voluntarily entered into some months ago. He will, also at his own expense, commence clinical counselling with a professional experienced in the court system and approved by the Commission. In addition, Judge Fitzsimmons will, again at his own expense, participate in sensitivity training and monitoring by the Anti-Defamation League of the B'nai B'rith, with particular reference to and focus upon the charges relating to the matters contained in the Sixth Charge.

Judge Fitzsimmons further will be subject to an ongoing monitoring program by another judge or panel of judges to be appointed by the Chief Judge of the Probate and Family Court.

Judge Fitzsimmons has agreed to relinquish permanently the right to appointment or service as First Judge of a Division of the Probate and Family Court or Chief Judge of said court; and will also relinquish any right or authority to participate in court personnel decisions of any kind. Judge Fitzsimmons has also agreed that he will be permanently assigned outside Norfolk County, and to certain other terms not herein described.

Based on information that has come to the attention of the Commission subsequent to filing of the Formal Charges, which information has been confirmed by inquiry to the Chief Judge of the Probate and Family Court, the Commission believes that Judge Fitzsimmons has altered and corrected his conduct in material respects. In particular the Commission is informed that Judge Fitzsimmons has been hearing contested trials, observing appropriate work hours, and cooperating with other judges in the performance of his judicial duties.



BEFORE THE COMMISSION ON JUDICIAL CONDUCT

Complaints No. 89-105, 90-4, 91-45, 91-53, 91-71, and 92-49

AMENDED FORMAL CHARGES

Pursuant to Mass. G.L. ch. 211C, § 5(14), and Commission Rule 7, the Commission on Judicial Conduct hereby gives notice to the Honorable B. Joseph Fitzsimmons, Jr., Associate Justice of the Probate and Family Court Department, Norfolk Division, that it has found sufficient cause to issue formal charges in the above-captioned matters. Pursuant to Commission Rule 7(B)(4), the Commission hereby notifies Judge Fitzsimmons of his right to file, within ten (10) days after service of these Formal Charges, a response to the charges set forth below.

The Commission initiated Complaint No. 90-4 by its own motion on February 26, 1990. Complaints No. 89-105, 91-45, 91-53, and 91-71 were filed with the Commission by individual litigants in the Norfolk Probate and Family Court on August 9, 1989; March 29, 1991; April 9, 1991; and May 28, 1991, respectively. On July 10, 1990, the Commission voted to recommend the appointment of Special Counsel to investigate the allegations contained in Complaint No. 90-4. Special Counsel was appointed by the Supreme Judicial Court on August 2, 1990 and commenced an investigation.

On August 20, 1991, the Commission voted to consolidate Complaints No. 89-105, 91-45, 91-53, and 91-71 with Complaint No. 90-4, and found that there was sufficient cause to serve a statement of allegations against Judge Fitzsimmons, pursuant to Commission Rule 6. A statement of allegations was served on Judge Fitzsimmons on August 26, 1991 and Judge Fitzsimmons served a written response on the Commission on October 3, 1991. On January 16, 1992, the Commission held a formal meeting, at which Judge Fitzsimmons made an appearance with his attorney pursuant to Commission Rule 7. After meeting with Judge Fitzsimmons, the Commission deliberated and, finding by a preponderance of the credible evidence that there is sufficient cause to believe that there has been misconduct requiring a formal disciplinary hearing, voted to issue formal charges against Judge Fitzsimmons.

FIRST CHARGE

1. During his first ten years on the bench, from 1980 until sometime in 1990, Judge Fitzsimmons sought to avoid the trial of contested matters that came before him, particularly those that were lengthy or complicated.



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2. The means by which Judge Fitzsimmons avoided such trials included: (1) efforts to force the settlement of potentially lengthy or complicated contested cases by delaying or postponing the start of a trial and requiring the parties and counsel to confer regarding settlement under circumstances or for periods of time that were unreasonable and (2) refusals to commence a trial or to hear the evidence to conclusion for patently insufficient reasons or without giving any reasons at all.

3. By such means over a ten-year period, Judge Fitzsimmons largely avoided the trial of substantial contested cases, caused the workload of handling such contested cases to fall disproportionately on other judges, and caused the litigants who were the victims of this misconduct to be deprived of their full rights to be heard according to law and to lose confidence in the integrity and impartiality of the judiciary.

4. The following cases are evidence of the above-described pattern of conduct and provide examples of the many cases in which Judge Fitzsimmons has sought to avoid his responsibilities to hear and decide contested cases assigned to him for trial:

- a. Estate of Harold Waterman, No. 84-P-3059. On Monday, March 31, 1986, the parties, counsel, and witnesses (two of whom were in their eighties) came to court for the trial of this will contest. Judge Fitzsimmons called counsel into his lobby and said that he did not think he could conclude the case within the week he had left in the trial session. Counsel indicated that they thought they could complete the case; they also asked whether they could at least start the trial. Judge Fitzsimmons took the case off the trial list. The case settled prior to the next scheduled trial date, in July 1986, at least in part because the parties and counsel did not feel that they would receive a trial at that time and were concerned that they faced further delay and expense.
- b. Rodriguez v. Rodriguez, No. 85-D-0130. This case was assigned for trial before Judge Fitzsimmons on July 28 and 29, 1987. At Judge Fitzsimmons' direction, counsel and the parties spent both of these days out in the corridor unsuccessfully attempting to settle the case. When no settlement was reached, the case was taken off the trial list and later tried before another judge.
- c. Miranda v. Miranda, No. 87-D-1279. On Friday, December 4, 1987, Judge Fitzsimmons heard evidence on a motion to dismiss for lack of jurisdiction from





approximately noon until 2:30 p.m. After the Judge expressed concern about the intrusion of the hearing on the lunch hour and suggested continuing the case until the following Tuesday, both parties rested their cases. After extended colloquy, the Court declined to conclude the case and assigned it for further hearing. On Tuesday, December 8, instead of continuing with the hearing, the Judge recused himself. The ostensible grounds for recusal were that the husband's counsel believed that Judge Fitzsimmons was favoring wife's counsel. Counsel, both of whom wanted an expeditious decision, responded to the recusal with a joint motion requesting that Judge Fitzsimmons decide the case. Judge Fitzsimmons refused and let the recusal order stand. The case was later retried before another judge.

- d. Gosule v. Gosule, No. 83-M-0775. The trial on this complaint for modification was assigned to Judge Fitzsimmons on August 1, 1988. After parties and counsel spent the better part of two days in the courthouse without having a trial, the case settled, in large part because it did not seem to counsel and parties likely that there would ever be a trial. This experience created in the parties a lasting sense of frustration and anger with the judicial system.
- e. Fahey v. Fahey, No. 87-D-0335. This contested divorce was scheduled for trial before Judge Fitzsimmons on April 10, 1989. Judge Fitzsimmons did not try the case but rather sent the parties into the hallway to engage in settlement discussions. After lawyers, litigants, and witnesses had spent more than two days in the corridor waiting for a trial, the case settled on the third day, April 12, 1989, in significant part because of the delay, frustration, expense and the conclusion of the parties that they were not going to be heard.
- f. Maloney v. Maloney, No. 87-D-1435. This trial was assigned to Judge Fitzsimmons for trial on Tuesday, July 25, 1989. Counsel and their clients appeared that morning ready for trial. Judge Fitzsimmons called counsel in for several lobby conferences each involving a general discussion of settlement, and then held the case without starting a trial. After waiting in the corridor until approximately 2:45 or 3:00 p.m., when Judge Fitzsimmons returned to court from lunch, counsel were called into the Judge's lobby and advised that he was willing to start trial that afternoon but could not thereafter continue the trial because he was starting an assignment in Middlesex County. Judge



Fitzsimmons was not in fact assigned to Middlesex County during the last week of July, 1989 or during the month of August, 1989. The case went off the trial list. The litigants were angry and frustrated by the delay and expense caused by their unproductive day in court.

- g. Rao v. Rao, No. 83-M-0370. On August 1, 2, and 3, 1989, Judge Fitzsimmons kept the parties and counsel in this contested divorce in the hall negotiating for three days. At the end of three days, the parties reached a settlement that pleased none of them only because they had reluctantly concluded that Judge Fitzsimmons was not going to try the case.
- h. Perkins v. Perkins, No. 88-D-1797. In this contested divorce, the parties, their counsel and witnesses appeared before Judge Fitzsimmons on August 8, 1989, for a trial estimated to last two days. Judge Fitzsimmons declined to start the trial, telling the parties that he had a three-day case starting later that week and that he would not be able to complete their trial before then. The trial was taken off the list and later tried before another judge.
- i. Yusem v. Segale, No. 89-D-0864. At the hearing on temporary orders in this contested custody case, Judge Fitzsimmons indicated that he would retain jurisdiction and try the case himself. He scheduled the trial for August 10, 1989. The mother, a California resident, lived in a shelter for the homeless while awaiting a trial. The parties, attorneys, and witnesses -- including one young child -- appeared on August 10, 1989 ready for trial. No trial was held on August 10, 1989 as Judge Fitzsimmons was not at Court. The parties, attorneys, and witnesses returned to Court on August 11, 1989 and, at Judge Fitzsimmons' insistence, spent the day in unsuccessful settlement negotiations. The case involved allegations of sexual abuse and drug abuse. Accordingly, it was highly unlikely that the case would settle. During this time, parties and counsel met once briefly with Judge Fitzsimmons who was in his lobby, apparently available to try the case. After two days without a trial, counsel sought a new trial date from the Trial Department. The case was ultimately tried by another judge on August 16 and 17, 1989 in the Wrentham satellite session.
- j. Maynard v. Maynard, No. 87-D-1896. This contested divorce was scheduled for trial before Judge Fitzsimmons on September 18, 1989 and taken off the



list, after counsel, litigants, and witnesses had spent a morning sitting in the courtroom. Counsel were told only that Judge Fitzsimmons would not hear the case. Court records indicate that Judge Fitzsimmons did not hear any cases that day. Litigants and counsel were angry and frustrated by the delay and expense caused by this day in court.

- k. In Levy v. Levy, No. 88-D-1660, Judge Fitzsimmons started a custody trial on December 11, 1989 and then interrupted the direct examination of the plaintiff wife to note that there had been no pre-trial conference. Instead of simply holding a short pre-trial conference and then continuing with the trial, Judge Fitzsimmons took the trial, which involved the custody of a minor, off the list. It was later tried before another judge.
- l. Merlino v. Merlino, No. 88-D-1319. On February 6, 1990, Judge Fitzsimmons avoided the trial of this case by rejecting the parties' estimate of two days' trial time, revising the time upward to five days, and then taking the case off the list because he had only four days remaining in a trial session. The parties had brought twelve witnesses to Court with them, including two physicians and two accountants.

THEREFORE, the Commission charges that, by the foregoing pattern of conduct, Judge Fitzsimmons has violated Supreme Judicial Court Rule 3:09, Canon 3, which requires that a judge "perform the duties of his office impartially and diligently," Canon 3(A)(4), which provides that "[a] judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to the law," and Canon 3(A)(5), which requires the prompt disposition of the business of the Court. The consequences of this pattern of conduct and the impact of such conduct upon the litigants exposed to it are violations of Canon 2(A), which requires that a judge "conduct himself at all times in a manner that promotes public confidence in the judiciary."

#### SECOND CHARGE

1. Between 1980 and the present time, justices of the Probate and Family Court Department have been expected to be in the Courthouse and available to conduct the Court's business between 9:00 a.m. and 4:00 p.m. each court day, with an hour for lunch between 1:00 p.m. and 2:00 p.m.

2. Despite his awareness of the regular hours for Court business, between 1980 and sometime during the pendency of this investigation, Judge Fitzsimmons habitually arrived at the Norfolk County Probate Courthouse late in the morning and





routinely took the bench to start his morning session substantially later than the judges assigned to the other sessions. On a regular basis, Judge Fitzsimmons would continue his late-started morning session through the normal lunch hour, then recess for a lunch period that lasted most of the afternoon, and return to the Court at or shortly before 4:00 p.m.

3. As a result of his failure to observe the established work schedule of the Court during this period of time, Judge Fitzsimmons was unavailable to conduct the business of the Court for almost half of its morning session and for almost all of its afternoon session. His failure to maintain a regular schedule, consistent with that of the other judges, often precluded him from cooperating with other judges in the efficient processing of cases. It also caused inconvenience and scheduling difficulties for lawyers and litigants appearing before him.

4. When Judge Fitzsimmons left the Courthouse in the afternoons -- or failed to arrive at work in the morning -- he regularly failed to account for his absences or inform the Court administration where he was. His unexplained absences also contributed to the inconvenience and scheduling difficulties experienced by lawyers, litigants, and Court personnel.

5. In addition, Judge Fitzsimmons misused a substantial portion of the time he spent at the Courthouse. While in the Courthouse, Judge Fitzsimmons spent substantial periods of time in his lobby occupied with paying personal bills, attending to personal correspondence, and making personal telephone calls.

THEREFORE, the Commission charges that, by the foregoing pattern of conduct, Judge Fitzsimmons has violated Supreme Judicial Court Rule 3:09, Canon 3, which provides that a judge should perform the duties of his office "impartially and diligently" and that "[t]he judicial duties of a judge take precedence over all his other activities"; Canon 3(A)(5), which provides that a "judge should dispose promptly of the business of the Court"; and Canon 3(B), which requires a judge to "facilitate the performance of the administrative responsibilities of other judges and court officials."

#### THIRD CHARGE

1. In part owing to the short and inappropriate work hours he kept during his first ten years as a judge, see supra Second Charge, during that period Judge Fitzsimmons demonstrated an unwillingness to coordinate with the other judges sitting in the Norfolk Probate Court in the efficient processing of cases through that Court.



2. When Judge Fitzsimmons was assigned to one of the Court's two trial sessions, the judge in the First Session was often prevented from sending Judge Fitzsimmons a case for hearing promptly at the beginning of the Court day because Judge Fitzsimmons had not yet arrived and taken the bench. Similarly, when Judge Fitzsimmons was assigned to the First Session, he frequently did not take the bench promptly upon the call of the list at 9:30 a.m. In that circumstance, he was unavailable to review and assign matters to the trial sessions in a prompt and timely manner. Owing to this difficulty, Assistant Registers working for Justice Fitzsimmons sent contested matters out of First Session to the trial sessions on their own, before Judge Fitzsimmons arrived, although the assignment of trials is considered a judge's administrative responsibility.

3. In addition, the prompt and efficient processing of cases requires a judge sitting in a trial session to communicate to the First Session and/or the Trial Department when he has disposed of a case and is available for additional work. Judge Fitzsimmons often settled or continued cases sent to him and then retired to his lobby without so informing the First Session. Some examples of this behavior are:

- a. Between March 15 and March 23, 1990, Judge Fitzsimmons tried Merlino v. Merlino, No. 88-D-1319, for approximately six-and-one-half days. He was on the bench for only two or three hours each of these days. Owing to the Judge's schedule, the case, which had been estimated by the parties as a two day trial, took far longer to try than it should have, at great expense to the parties. Judge Fitzsimmons conducted little other Court business on those days.
- b. On May 14, 1990, Judge Fitzsimmons was sent Krigman v. Krigman, No. 77-M-0883, at approximately 9:45 a.m. Although he recused himself from the Krigman case, Judge Fitzsimmons did not notify the First Session or send in for any other work during that morning.
- c. Weston v. Weston, No. 89-D-0356, originally estimated at two days, was tried over eight days commencing June 25, 1990. Each day, Judge Fitzsimmons tried this divorce case from approximately 11:00 a.m. until 2:30 p.m. He conducted little other Court business on these days.
- d. On a number of occasions, Judge Fitzsimmons placed a continued trial on the trial list for 10:00 a.m. on a subsequent date, so as to create the appearance that he would be busy with the trial of the case that morning, while telling the parties that trial would commence at 12:00 noon. On those occasions, he did



not handle any other court business during the two hours between 10:00 a.m. and noon.

4. From 1980 until sometime during the pendency of this investigation, Judge Fitzsimmons was often simply unavailable to conduct the business of the Court during the afternoon session. This not only cut down on the amount of work he performed but also placed burdens on the assistant registers and other judges sitting in the Courthouse. When Judge Fitzsimmons was assigned to the First Session and was not available in the afternoon, a judge in a trial session was forced to interrupt her or his work to handle routine, uncontested or emergency matters.

5. In connection with Judge Fitzsimmons' absences from the Courthouse in the afternoon, Judge Fitzsimmons on various occasions left instructions with at least one Assistant Register to contact him if necessary at the Pro Shop of the Wollaston Golf Club. Between 1980 and 1990, at least one Assistant Register did telephone and reach Judge Fitzsimmons at the Pro Shop of the Wollaston Golf Club on several workday afternoons.

THEREFORE, the Commission charges that, by the foregoing pattern of conduct, Judge Fitzsimmons has violated Supreme Judicial Court Rule 3:09, Canon 3(A)(5), which requires a judge to "dispose promptly of the business of the Court," and Canon 3(B), which requires a judge to "facilitate the performance of the administrative responsibilities of other judges and court officials."

#### FOURTH CHARGE

1. During his service on the bench, Judge Fitzsimmons has failed to conduct fair, complete, and orderly hearings sufficient to permit him to reach a reasoned judgment about the substantive issues raised by many of the disputes before him. Instead, he has engaged in a pattern of conduct that has denied a fair hearing to litigants. In his handling of a number of cases, the hearings provided have been so cursory as to deny the litigants any meaningful hearing whatsoever. In other cases, he has failed to maintain effective communication with parties and counsel with the result that his orders have not reflected the individual circumstances or equities of the cases before him.

2. The following cases are evidence of the above-described pattern of conduct and provide examples of the many cases in which Judge Fitzsimmons has failed to provide litigants a fair, complete, and orderly hearing.





- a. In re Guardianship of Mary Wyatt, No. 88-P-0286. On September 15, 1989, Judge Fitzsimmons ordered a permanent guardianship and the administration of anti-psychotic medication against the wishes of a mentally ill ward of the state without taking any evidence at all. Counsel for the Department of Mental Health, which was the petitioner and bore the burden of establishing the necessity of guardianship and medication, was not in the Courtroom at the time and offered no evidence. By agreement of counsel, the case was reheard by another judge on October 5, 1989 and Judge Fitzsimmons' order vacated.
- b. On July 20, 1989, Judge Fitzsimmons was scheduled to hear treatment plan reviews, under the authority of Rogers v. Commissioner of Mental Health, in cases involving guardianships of the mentally ill and retarded at the Paul Dever School in Taunton. He had previously made several requests to reschedule the hearings so that he might compete in a golf tournament and had been told that this request could not be accommodated. Judge Fitzsimmons then ordered a substantial number of the files of cases rescheduled for hearing to be brought to him in advance and signed the treatment orders before conducting any hearings. He then attended the Dever School session for approximately one hour on the morning of July 20, 1989 and disposed of 23 cases, many without even the semblance of a hearing.
- c. On numerous occasions, Judge Fitzsimmons has engaged in a practice of preemptory statements to unemployed litigants particularly women, stating that they should get a job, and implying that they have been idle by choice, although he has made no inquiry or other effort to inform himself about the parties' work histories, circumstances, or the equities of the cases before him, including whether they have been working, are diligently seeking work, or, indeed, whether they are capable of working. His failure to elicit evidence and apparent indifference to the facts have upset and angered these litigants. Examples include a pretrial conference in Rao v. Rao, No. 83-M-0370, on August 1, 1988; and hearings in Hayden v. Hayden, No. 81-M-0899, on January 17, 1991; Molina v. Covey, No. 90-W-0626, on January 29, 1991; Gibbs v. Gibbs, No. 84-D-1867, on March 8, 1991; and Canniff v. Canniff, No. 84-D-1041, heard September 20, 1991.



- d. Under applicable law, a justice of the Probate and Family Court has a duty to conduct an independent review of and approve the terms of uncontested divorces. Judge Fitzsimmons has regularly failed to give uncontested divorces the hearing required by law. He does not read the agreements or question the parties about the terms of or their understanding of their separation agreements.
- e. In recent instances, Judge Fitzsimmons has focused on a single aspect of separation agreements -- the presence or absence of a provision for the payment of college education expenses -- at the expense of other aspects of the agreements. Often, without knowledge of or inquiry into the terms of the settlement, the equities of the case, or the relative circumstances of the parties, and on occasion when circumstances indicate that a provision allocating college education expenses was not a relevant issue, he has announced that he will not approve a settlement unless there is a specific provision allocating responsibility for the payment of the children's college education expenses. Examples include Mulcahey v. Mulcahey, No. 89-D-1922, heard September 11, 1990; and Parsons v. Parsons, No. 90-D-0922; Coady v. Coady, No. 90-D-0823; Barman v. Barman, No. 88-D-1877; and Dowd v. Dowd, No. 90-D-1821, all heard on February 8, 1991.
- f. Judge Fitzsimmons' focus upon payments for college education to the exclusion of other issues raised in a case before him is not limited to approval of separation agreements. For instance, in Molina v. Covey, No. 90-W-0626, heard on January 29, 1991, he ordered payment of fifty percent of the college education expenses of an eight-year old child as an effective substitute for a current support order. Similarly, in Lane v. Lane, No. 74-M-1816, heard on February 6, 1991, he allowed a motion to decrease a support order for a college-age child upon the condition that the father make a \$4,000 annual lump-sum contribution to college expenses, which sum exceeded the amount by which the annual support obligation was reduced. As part of that order and despite the fact that the father was not in arrears at all on his child support obligations, Judge Fitzsimmons declared, "Okay. That's what we'll do. He's got to come up with \$4,000 a year. If he misses a payment, 20 days in the House of Corrections . . . ."



- g. On at least three occasions, Judge Fitzsimmons has processed uncontested divorces in a group. On these occasions, he has called a number of uncontested divorces (on one occasion, six couples) to the bench, sworn the parties in as a group, and pronounced them divorced. On one of these occasions, he asked the entire group certain questions and received the answers in unison. On another occasion, he asked no questions at all.
- h. On June 19, 1990, Judge Fitzsimmons, with full awareness of his personal relationship with the husband and over the objections of the wife and her counsel, attempted to mediate several contested motions in Seddon v. Seddon, No. 90-D-0808, in his lobby. In the course of the unsuccessful mediation, the wife explained to Judge Fitzsimmons that she wanted several restrictions on visitation because of the husband's alcoholism. Judge Fitzsimmons dismissed her assertions, stating, "I've seen Paul on the golf course for 19 years and I've never seen a problem." This action by Judge Fitzsimmons caused the wife to lose faith in the integrity and impartiality of the judicial process.
- i. In a May 21, 1991 hearing in Rego v. Rego, No. 90-D-0170, Judge Fitzsimmons paid insufficient attention to the individual circumstances and equities of a dispute over child support arrearages, including the defendant's work history, current work status, and child support orders in another court, before sentencing the defendant to ten days in jail. Judge Fitzsimmons also demonstrated a lack of sensitivity in his handling of the defendant's application for court-appointed counsel. Finally, after sentencing defendant to jail, Judge Fitzsimmons failed to explain that defendant could purge his contempt and jail sentence by paying the arrearage owed. The pro se defendant only learned that he could purge his contempt after he had spent a day in jail.

Therefore, the Commission charges that, by the foregoing pattern of conduct, Judge Fitzsimmons has violated Supreme Judicial Court Rule 3:09, Canon 3 because he has not performed the duties of his office diligently, Canon 3(a)(1) because he has not been "faithful to the law," and Canon 3(a)(4) because he has not "accord[ed] to every person who is legally interested in a proceeding, or his lawyer full right to be heard according to law." He has also violated Canon 2(A) by acting in a manner that undermines public confidence in the integrity and impartiality of the judiciary.





#### FIFTH CHARGE

1. During his service on the bench, Judge Fitzsimmons has exhibited a repeated inability to exercise self-control and patience. He has engaged in a pattern of recurrent insensitive, unpleasant, and demeaning comments and remarks to litigants, counsel, and courthouse staff. He has over-reacted to perceived threats, slights, or other misbehavior by litigants, counsel, and courthouse staff and has acted in an inappropriately angry and uncontrolled manner.

2. The following are examples of occasions on which Justice Fitzsimmons has failed to be "patient, dignified, and courteous with litigants" and to "maintain order and decorum in proceedings before him":

- a. In re Hottel, No. 81-F-0503. On March 19, 1986, the 72 year-old mother of a paranoid schizophrenic son who had recently been involuntarily committed to Medfield State Hospital, appeared before Judge Fitzsimmons with a petition for permanent guardianship with authority to treat with anti-psychotic drugs. Judge Fitzsimmons allowed the petition, but in the course of hearing it made a number of insensitive remarks, questioning why a mother would want to have her son committed.
- b. McGrath v. Crowley, No. 87-W-0047. On August 6, 1987, Judge Fitzsimmons made a number of insensitive and inappropriate remarks impugning the moral character of one of the parties in this paternity action.
- c. On December 29, 1989, during the trial of a complaint for modification, Judge Fitzsimmons berated one of the litigants in Sines v. Sines, No. 88-D-779, for frowning or squinting at him. When the attorney representing the litigant objected on the record, Judge Fitzsimmons recused himself, bringing the hearing to an abrupt halt.
- d. After the above-described hearing in Sines v. Sines, Judge Fitzsimmons called the Norfolk County District Attorney's office about the litigant's behavior in Court. He then called the litigant into his lobby; the litigant and his attorney explained to Judge Fitzsimmons that the litigant frowns or stares inadvertently on occasion because he suffers from epilepsy.
- e. On February 9, 1990, Judge Fitzsimmons was assigned the trial of a complaint for modification in Griffin v. Griffin, No. 80-M-1217. He treated the wife abusively, suggesting that her income as a physician was not high enough and that she was hiding income.



- f. On April 10, 1990, Creighton v. Creighton, No. 89-D-0216, was before Judge Fitzsimmons for a pretrial conference. When the husband, who was representing himself, disagreed with an off-hand assessment Judge Fitzsimmons made of the value of some rental property he owned in Boston, Judge Fitzsimmons lost his temper and began yelling at him. Judge Fitzsimmons then ordered the husband to the Court Clinic for an immediate evaluation, stating, "We'll see if you're competent to represent yourself. We'll find out about you." At that point, the pretrial conference was suspended. The husband spent several hours sitting in the Courthouse hallway awaiting direction before he finally asked a Court Officer to take him to the Court Clinic, where he was found competent.
- g. On April 5, 1991, Judge Fitzsimmons heard a motion for a temporary visitation order in Mason v. Mason, No. 85-D-1764. The mother, who had physical custody of the child, was seeking to prevent visitation on the grounds that the father had been physically and emotionally abusive to the child. Judge Fitzsimmons, prior to having heard any evidence or arguments from counsel concerning the case, made a number of insensitive and unnecessarily hurtful comments, suggesting that "she might be one of these brainwashing mothers" and that she was "half the problem here, you're so hyper."
- h. Chesla v. Gorgens, No. 87-D-1424. During a hearing, held on May 31, 1991, in which a mother was challenging an ex parte change in custody of her youngest child to the father that Judge Fitzsimmons had ordered several days earlier after hearing the father's allegation of physical abuse by the stepfather, Judge Fitzsimmons treated litigant and counsel alike inappropriately. Although the mother and her attorney represented that they had significant information to present to the Court bearing on whether the child should be returned to his mother, Judge Fitzsimmons refused to listen to it, instead suggesting that the mother was "in denial mode" and cautioning her, "You got to look in the mirror," and responding to counsel's attempts to be heard, "You're not gonna fool me on this one!"
- i. At a hearing in Hedlund v. Chetwynd, No. 33668, on October 9, 1985, Judge Fitzsimmons harshly berated one of the attorneys, accusing her of "judge-baiting" and immoral and unethical conduct when, owing to a misunderstanding, she had arranged for a psychologist



to be available by telephone conference call at 2:00 p.m. after Judge Fitzsimmons had announced, outside the attorney's hearing, that he was suspending the session for the day at 12:00 noon because he had to hear a case in Taunton.

- j. Flaherty v. Flaherty, No. 85-D-0490. This divorce came before Judge Fitzsimmons for trial on July 5, 1988. After Judge Fitzsimmons made attempts to mediate the case, the husband's counsel said that he did not agree with the Judge that the case should settle. Judge Fitzsimmons responded by telling husband's counsel, in substance, that he would not believe anything he said, even if he were under oath. When counsel asked the Judge to recuse himself, based on this disparaging comment, Judge Fitzsimmons, picking up on an earlier comment by the husband that counsel had represented the family for twenty years, directed counsel to take the stand and asked him questions about his representation of the wife, looking for a conflict that would disqualify counsel. Finding none, the Judge recused himself.
- k. On July 19, 1990, during a motion session at Dedham, Judge Fitzsimmons lost control of his temper and his tongue without provocation and engaged in an extended diatribe in which he accused attorney Gail Sullivan of misconduct in his courtroom. The outburst was triggered by Ms. Sullivan asking the Assistant Register for permission to photocopy a document.
- l. On December 10, 1991, the case of Lau v. Lau, No. 91-D-1643, was before Judge Fitzsimmons for approval of an uncontested divorce. Husband and wife were Chinese immigrants, and Judge Fitzsimmons expressed concern about the wife's ability to understand English. Wife's counsel represented to the Court that, "[s]he doesn't speak as well, but she understands." After an inept and intimidating interrogation of the wife to determine whether she understood English, Judge Fitzsimmons accused the wife's attorney of knowing misrepresentations to the Court and announced his intention to report her to the Board of Bar Overseers. The wife in fact understood English but was too intimidated by Judge Fitzsimmons' outburst to reply to him.
- m. On February 25, 1987, Judge Fitzsimmons lost his temper with the Register of Probate, the First Assistant Register, the Trial Clerk and a fellow judge over what he perceived to be their roles in sending a case of Judge Fitzsimmons' brother, Mark Fitzsimmons,





to the Marlborough satellite session. He treated each of these men abusively and uttered particular threats to the Register, the First Assistant Register, and the Trial Clerk.

- n. On the afternoon before Thanksgiving in 1988, Judge Fitzsimmons entered the basement office of the Night Supervisor at Norfolk Probate Courthouse and, without identifying himself, demanded a key to the Courthouse's fire door. He treated the Night Supervisor abusively when the night supervisor refused to give Judge Fitzsimmons a key. Thereafter, Judge Fitzsimmons caused two Court Officers to be brought over from the Superior Court and the District Court and summoned the Night Supervisor up to his lobby. In his lobby, Judge Fitzsimmons threatened the Night Supervisor with a jail sentence lasting over the long Thanksgiving weekend.

THEREFORE, the Commission charges that, by the foregoing pattern of conduct, Judge Fitzsimmons has violated Supreme Judicial Court Rule 3:09, Canon 3(A)(3), which provides that "[a] judge should be patient, dignified and courteous to litigants . . . witnesses, lawyers, and others with whom he deals in his official capacity" and Canon 3(A)(2), which requires that a judge "maintain order and decorum in proceedings before him."

#### SIXTH CHARGE

1. Judge Fitzsimmons has, while in the Courthouse and in the presence of Court personnel, engaged in comments and remarks describing others in explicitly anti-Semitic terms. In addition, he, his brother, attorney Mark Fitzsimmons, and several other private counsel who are friends of Judge Fitzsimmons employ a form of double-talk or verbal code in which individuals they believe to be Jewish are referred to as "Canadians" or by certain other related terms. These demeaning remarks impair the perception that people of all creeds receive equal treatment within the Court system.

2. The following are examples of explicitly anti-Semitic statements about counsel made by Judge Fitzsimmons and heard by various Court personnel:

- a. Judge Fitzsimmons reacted to hearing that an attorney of the Jewish faith was waiting in his courtroom to argue a Chapter 209A petition by remarking, in substance, "It's time to go warm up the ovens."



- b. During the trial of Nance v. Demolino, No. 76-M-1587, in March, 1981, Judge Fitzsimmons made the following comment, in substance, about the trial strategy of one of the lawyers: "typical Canadian. All he thinks about is money."
- c. Judge Fitzsimmons on another occasion, in the presence of at least one other member of the courthouse staff, used the epithet "kike" to describe a Jewish attorney.

3. Judge Fitzsimmons; his brother, attorney Mark Fitzsimmons; and certain other private counsel who are friendly with Judge Fitzsimmons from time to time refer to Jewish individuals, usually attorneys appearing in that court, as "Canadians." In the same vein and as part of the same jargon, Judge Fitzsimmons has been heard in his lobby or from the bench to refer to the "North"; to comment that it feels "chilly"; or to refer to "the Montreal Express" or a "Montreal Sunset" when Jewish attorneys come into the courtroom. When questioned, Judge Fitzsimmons has explained that he uses the code word "Canadians" so "they won't know that we are talking about them."

THEREFORE, the Commission charges that, by the foregoing pattern of conduct, Judge Fitzsimmons has violated Supreme Judicial Court Rule 3:09, Canon 2(A) as his conduct involves disrespect for the law and detracts from public confidence in the integrity and impartiality of the judiciary. He has also violated Canon 3(B)(5) in that he has "in the performance of judicial duties, by words or conduct, manifest[ed] bias or prejudice based upon . . . religion" and Canon 3(B)(6) in that he has not required lawyers in proceedings before him to refrain from manifesting this same bias or prejudice. Finally, his conduct offends Canon 3(A)(1), (2) and (3) in that it violates the judge's obligation to be faithful to the law, to maintain order and decorum and to be patient, dignified and courteous.

#### SEVENTH CHARGE

1. Judge Fitzsimmons has from time to time disclosed materials from impounded or confidential case files to the press.

2. Judge Fitzsimmons has released information to the late Boston Herald columnist Norma Nathan from the impounded case files of at least two cases involving a celebrity or public figure: Ocasek v. Ocasek, No. 86-D-1688, and Heckler v. Heckler, No. 84-D-0439. Judge Fitzsimmons had himself ordered both the Ocasek and Heckler files impounded.



3. Judge Fitzsimmons periodically received telephone calls from Ms. Nathan at the Courthouse and on occasion returned these calls from the Courthouse. On a number of occasions, Ms. Nathan published in her Eye column stories about cases that had recently been before Judge Fitzsimmons.

THEREFORE, the Commission charges that, by the foregoing pattern of conduct, Judge Fitzsimmons has violated Supreme Judicial Court Rule 3:09, Canon 2(A), because he has not respected and complied with the law, Canon 3(A)(1), because he has not been faithful to the law, and Canon 2, because his actions have created the appearance of impropriety.

#### EIGHTH CHARGE

1. While on the bench, Judge Fitzsimmons has "len[t] the prestige of his office" to advance the interests of his brother, attorney Mark Fitzsimmons, and has permitted Mark Fitzsimmons to "convey the impression that [he was] in a special position to influence" Judge Fitzsimmons.

2. On or around February 21, 1989, Judge Fitzsimmons insisted that Mark Fitzsimmons hold a settlement conference, which an Assistant Register was mediating, in his lobby. Although he was not hearing the case, Shepherd v. Shepherd, No. 77-M-112, Judge Fitzsimmons remained in his lobby during the mediation, offering Mark Fitzsimmons' opposing counsel casual advice regarding the benefits of settling the case.

3. In addition to the above incident and with the same consequence, Judge Fitzsimmons allowed Mark Fitzsimmons to use his lobby to transact business in the judge's absence. Mark Fitzsimmons stopped this practice only when ordered to do so by another judge.

4. The impression of influence and special position has been reinforced and furthered by the fact that on various occasions, Judge Fitzsimmons permitted, tolerated or condoned the use of a parking space reserved for a Judge at the Norfolk Probate Court by Mark Fitzsimmons; and by the fact that Judge Fitzsimmons has regularly allowed and encouraged Mark Fitzsimmons to visit with him in his lobby for social, or non-business purposes, in the presence of members of the court staff who were in the course of performing their official duties.

5. On February 25, 1987, the Trial Department assigned Haney v. Haney, No. 85-D-621, to the Marlborough satellite session for trial. After Mark Fitzsimmons, who was representing the defendant wife, complained about this assignment to his brother, Judge Fitzsimmons attempted to countermand this assignment. When the Trial Department would






not accede to his request that the case not be sent to Marlborough, Judge Fitzsimmons, in addition to losing his temper as previously alleged, supra Fifth Charge, sought to assign all of his pending contested cases to the Marlborough satellite session in an apparent attempt to prevent his brother's case from being heard in Marlborough.

THEREFORE, the Commission charges that, by the foregoing conduct, Judge Fitzsimmons has violated Supreme Judicial Court Rule 3:09, Canon 2(B), because he has allowed a family relationship to "influence his judicial conduct and good judgment"; because he has sought to "lend the prestige of his office to advance the private interests of others," notably his brother, attorney Mark Fitzsimmons, in a manner that has interfered with court staff in the performance of their duties and that has created an atmosphere prejudicial to litigants and counsel on the opposite side; and because he has permitted the impression to be conveyed that his brother is "in a special position to influence him."

COMMISSION ON JUDICIAL CONDUCT

  
Hon. George C. Keady, Jr., Chairperson

DATED: December 30, 1992

WP-6049/C  
12/15/92



Exhibit A

VOLUNTARY ADMISSIONS TO THE CHARGED MISCONDUCT

B. Joseph Fitzsimmons, Jr., makes the following voluntary admissions to the matters set forth in the Amended Formal Charges brought against him by the Commission on Judicial Conduct:

FIRST CHARGE

Responding to the First Charge of the Amended Formal Charges filed by the Commission on Judicial Conduct, Judge Fitzsimmons admits that during his first ten years on the bench, from 1980 until sometime in 1990, he sought to avoid the trial of contested matters that came before him, particularly those that were lengthy or complicated, by efforts to force the settlement of such cases and refusals to commence trials of such cases.

Judge Fitzsimmons admits that by such means over a ten-year period, he largely avoided the trial of substantial contested cases, caused the workload of handling such contested cases to fall disproportionately on other judges, and caused the litigants who were adversely affected by this misconduct to be deprived of their full rights to be heard according to law and to lose confidence in the integrity and impartiality of the judiciary.

Judge Fitzsimmons further admits that, by the foregoing pattern of conduct, he has violated Supreme Judicial Court Rule 3:09, Canon 3, which requires that a judge "perform the duties of his office impartially and diligently," Canon 3(A)(4), which



provides that "[a] judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to the law," and Canon 3(A)(5), which requires the prompt disposition of the business of the Court. The consequences of this pattern of conduct and the impact of such conduct upon the litigants exposed to it are violations of Canon 2(A), which requires that a judge "conduct himself at all times in a manner that promotes public confidence in the judiciary."

#### SECOND CHARGE

Responding to the Second Charge, Judge Fitzsimmons admits that between 1980 and the present time, justices of the Probate and Family Court Department have been expected to be in the Courthouse and available to conduct the Court's business between 9:00 a.m. and 4:00 p.m. each court day, with an hour for lunch between 1:00 p.m. and 2:00 p.m.

Judge Fitzsimmons admits that despite his awareness of the regular hours for Court business, between 1980 and sometime during the pendency of this investigation, he habitually arrived at the Norfolk County Probate Courthouse late in the morning and routinely took the bench to start his morning session substantially later than the judges assigned to the other sessions. On a regular basis, he would continue his late-started morning session through the normal lunch hour, then recess for a lunch period that lasted most of the afternoon, and return to the Court at or shortly before 4:00 p.m.





Judge Fitzsimmons admits that as a result of his failure to observe the established work schedule of the Court during this period of time, he was unavailable to conduct the business of the Court for almost half of its morning session and for almost all of its afternoon session. His failure to maintain a regular schedule, consistent with that of the other judges, and to account for his absences, often precluded him from cooperating with other judges in the efficient processing of cases. It also caused inconvenience and scheduling difficulties for lawyers and litigants appearing before him.

Judge Fitzsimmons further admits that, by the foregoing pattern of conduct, he has violated Supreme Judicial Court Rule 3:09, Canon 3, which provides that a judge should perform the duties of his office "diligently" and that "[t]he judicial duties of a judge take precedence over all his other activities"; Canon 3(A)(5), which provides that a "judge should dispose promptly of the business of the Court"; and Canon 3(B), which requires a judge to "facilitate the performance of the administrative responsibilities of other judges and court officials."

### THIRD CHARGE

Responding to the Third Charge, Judge Fitzsimmons admits that in part owing to the short and inappropriate work hours he kept during his first ten years as a judge, see supra Second Charge, during that period he demonstrated an unwillingness to coordinate with the other judges sitting in the Norfolk Probate Court in the efficient processing of cases through that Court.



Judge Fitzsimmons admits that when he was assigned to one of the Court's two trial sessions, the judge in the First Session was often prevented from sending Judge Fitzsimmons a case for hearing promptly at the beginning of the Court day because Judge Fitzsimmons had not yet arrived and taken the bench. Similarly, when Judge Fitzsimmons was assigned to the First Session, he frequently did not take the bench promptly upon the call of the list at 9:30 a.m. In that circumstance, he was unavailable to review and assign matters to the trial sessions in a prompt and timely manner. Owing to this difficulty, Assistant Registers working for him sent contested matters out of First Session to the trial sessions on their own, before he arrived, although the assignment of trials is considered a judge's administrative responsibility.

Judge Fitzsimmons admits that in addition, the prompt and efficient processing of cases requires a judge sitting in a trial session to communicate to the First Session and/or the Trial Department when he has disposed of a case and is available for additional work. He often settled or continued cases sent to him and then retired to his lobby without so informing the First Session.

Judge Fitzsimmons admits that from 1980 until sometime during the pendency of this investigation, he was often simply unavailable to conduct the business of the Court during the afternoon session. This not only cut down on the amount of work he performed but also placed burdens on the assistant registers and other judges sitting in the Courthouse. When he



was assigned to the First Session and was not available in the afternoon, a judge in a trial session was forced to interrupt her or his work to handle routine, uncontested or emergency matters.

Judge Fitzsimmons further admits that, by the foregoing pattern of conduct, he has violated Supreme Judicial Court Rule 3:09, Canon 3(A)(5), which requires a judge to "dispose promptly of the business of the Court," and Canon 3(B), which requires a judge to "facilitate the performance of the administrative responsibilities of other judges and court officials."

#### FOURTH CHARGE

Responding to the Fourth Charge, Judge Fitzsimmons admits that during his service on the bench, he has failed to conduct fair, complete, and orderly hearings sufficient to permit him to reach a reasoned judgment about the substantive issues raised by many of the disputes before him. He admits he has engaged in a pattern of conduct that has denied a fair hearing to litigants. In his handling of a number of cases, he admits the hearings provided have been so cursory as to deny the litigants any meaningful hearing whatsoever. In other cases, he admits he has failed to maintain effective communication with parties and counsel with the result that his orders have not reflected the individual circumstances or equities of the cases before him.

Judge Fitzsimmons further admits that, by the foregoing pattern of conduct, he has violated Supreme Judicial Court Rule





3:09, Canon 3 which requires that a judge "perform the duties of his office diligently," Canon 3(A)(1), which requires that a judge "should be faithful to the law," and Canon 3(A)(4) which requires that a judge "shall accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law." He has also violated Canon 2(A) which requires that a judge "should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

#### FIFTH CHARGE

Responding to the Fifth Charge, Judge Fitzsimmons admits that during his service on the bench, he has exhibited a repeated inability to exercise self-control and patience. He admits he has engaged in a pattern of recurrent insensitive, unpleasant, and demeaning comments and remarks to litigants, counsel, and courthouse staff. He admits he has over-reacted to perceived threats, slights, or other misbehavior by litigants, counsel, and courthouse staff and has acted in an inappropriately angry and uncontrolled manner.

Judge Fitzsimmons further admits that, by the foregoing pattern of conduct, he has violated Supreme Judicial Court Rule 3:09, Canon 3(A)(3), which provides that "[a] judge should be patient, dignified and courteous to litigants . . . witnesses, lawyers, and others with whom he deals in his official capacity" and Canon 3(A)(2), which requires that a judge "maintain order and decorum in proceedings before him."



### SIXTH CHARGE

In response to the Sixth Charge, Judge Fitzsimmons admits that from time to time he has, while in the Courthouse and in the presence of Court personnel, used and countenanced the use by certain other persons with whom he is friendly, of words, phrases and comments which would reasonably be understood by a person hearing such words, phrases and comments, as being anti-Semitic terms describing or referring to certain attorneys of the Jewish faith. The Judge now recognizes that the insensitive use of such words, phrases and comments, however lacking in anti-Semitic intent or feelings, creates an appearance of anti-Semitic bias and prejudice reflecting adversely on, and creating criticism of himself and the judiciary, for which he is profoundly sorry.

Judge Fitzsimmons further admits, that by the foregoing conduct, he has violated Supreme Judicial Court Rule 3:09, Canon 2(A), which requires that a judge "should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary," and Canon 3(A)(3), which requires a judge to be dignified and courteous to those with whom he deals in his official capacity."

Judge Fitzsimmons assures the Commission that he has never harbored anti-Semitic feelings or views and has never made, nor has he been charged with making, any decision or ruling in the performance of his judicial duties which was based upon any anti-Semitic feelings or views. Judge Fitzsimmons expresses his deep concern and regret that the insensitive use of



language could and did signal to at least some persons an anti-Semitic bias and prejudice, which he assures the Commission he does not in fact possess in either his public or his private life. The Judge has consulted at some length with three different mental health professionals in an effort to gain a full understanding of the implications of his conduct and explore ways to insure that it does not recur. The advisors with whom he has consulted have reported that after inquiry they have observed no evidence of anti-Semitic feelings or views on Judge Fitzsimmons' part. The Judge further assures the Commission that he is taking and will continue to take great care to insure that his language and his conduct now and in the future are supportive of that conclusion in every respect, including continued participation at his own expense in ongoing counselling and sensitivity training.

#### SEVENTH CHARGE

Responding to the Seventh Charge, Judge Fitzsimmons admits that he has from time to time disclosed materials from impounded or confidential case files to the press.

Judge Fitzsimmons further admits that, by the foregoing pattern of conduct, Judge Fitzsimmons has violated Supreme Judicial Court Rule 3:09, Canon 2(A), which requires that a judge "should respect and comply with the law," Canon 3(A)(1), which requires that a judge "should be faithful to the law," and Canon 2, which requires that a judge "should avoid the appearance of impropriety in all his activities."





#### EIGHTH CHARGE

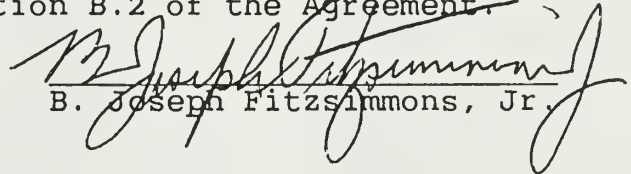
Responding to the Eighth Charge, Judge Fitzsimmons admits that he allowed his brother, Attorney Mark Fitzsimmons, to use his lobby to transact business. On one occasion, Judge Fitzsimmons was present in his lobby with Mark Fitzsimmons and his opposing counsel, together with an assistant register. On other occasions the Judge was not present. The Judge further admits that he permitted or condoned the use of his parking space at the courthouse by Mark Fitzsimmons and that he regularly allowed and encouraged his brother, Mark Fitzsimmons, to visit with him in his lobby for social or non-business reasons, in the presence of the Court staff who were in the course of performing their official duties.

Judge Fitzsimmons also admits that on February 25, 1987, when Mark Fitzsimmons complained to him about having been assigned to the Marlborough satellite session, for the trial of Haney v. Haney, No. 85-D-621, he erroneously concluded that Mark Fitzsimmons was being discriminated against because of their sibling relationship and attempted to countermand the assignment. The Judge admits that when the Trial Department would not accede to his request, he inappropriately lost his temper, berated and used abusive language to court personnel, and improperly attempted to assign other pending cases to the Marlborough satellite session. Notwithstanding that Judge Fitzsimmons has never sat on a case involving Mark Fitzsimmons and that Mark Fitzsimmons did in fact go to the Marlborough satellite session on February 27, 1987 in the Haney case, Judge



Fitzsimmons admits that, by the foregoing conduct, he has violated Supreme Judicial Court Rule 3:09, Canon 2(B), which provides that a judge should not allow a family relationship to influence his judicial conduct or good judgment, and should not permit the impression to be conveyed that his brother is in a special position to influence him.

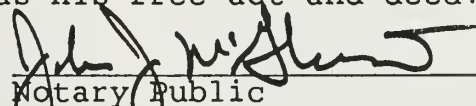
I have signed the above Voluntary Admissions to Charged Misconduct pursuant to Section B of the Agreement Governing Disposition of Formal Charges this 28<sup>th</sup> day of December, 1992, and hereby authorize the Commission to release this Admission publicly as contemplated by Section B.2 of the Agreement.

  
B. Joseph Fitzsimmons, Jr.

Commonwealth of Massachusetts)  
County of Suffolk )

Dec. 28, 1992

Then appeared before me B. Joseph Fitzsimmons, Jr., to me known, and stated that the execution of the above Voluntary Admission to Charged Misconduct was his free act and deed.

  
Notary Public

My commission expires: 12/27/96

WP-7971/C

